The Chartered Institute of Taxation

Advanced Technical

Cross Border Indirect Taxation

May 2024

Suggested answers

Answer 1

The IT hubs in Birmingham and Paris which are branches of Tolich Ltd, will act as importer of record for the hardware units being imported from the US and an import entry will need to be completed in both countries. The imports will not qualify for a preferential rate of duty on the assumption they are of US origin, so a duty cost may arise unless the tariff code appropriate to the units carries a zero rate of customs duty. Alternatively, Tolich Ltd could use 'Inward Processing relief by declaration' so that a duty cost does not arise in relation to the hardware units destined for Ireland. As the purchase is from a 3rd party, method 1 can be used for the customs valuation i.e. the invoice value, plus shipping and insurance costs if not already included in the invoice value.

Tolich Ltd will require a UK and an EU EORI in order to import into the UK and France and to export to Ireland. Any customs duty payable could be paid through a deferment account, either Tolich Ltd's own or the freight agent's account. The agent will likely make a charge for this facility but it is often still more cost effective to use this option than to incur bank charges for providing a guarantee for your own account.

Import VAT would be payable through PIVA in the UK as Tolich Ltd is VAT registered (see below) and similar arrangements may exist in France although this would need to be confirmed with a local specialist. Otherwise the import VAT could be paid through the same deferment account as the customs duty.

As the units are owned by Tolich Ltd when they are imported, the import VAT incurred will be fully recoverable as the IT hubs are branches and therefore they are part of the same legal entity as Tolich Ltd headquarters in the UK.

The IT hubs are fixed establishments of Tolich Ltd with staff and business premises in Birmingham and Paris. The French branch will likely need to be VAT registered (although French VAT advice should be taken) as a result of recharges to the subsidiaries for the hardware and in any event the UK entity will be UK VAT registered on the basis of the operation of the UK store which is likely to have revenues in excess of the UK VAT registration threshold of £85,000. VAT incurred in the UK by the IT hub will be fully recoverable subject to the normal rules.. French VAT advice should be sought in relation to French VAT recovery on costs.

The IT hubs should invoice the overseas subsidiaries (which are separate legal entities) for the hardware and associated installation which would be regarded as incidental to the goods based on the fact the installation services would not constitute separate supplies with any value to the recipient in their own right. These principles were established in the leading VAT case on mixed versus single supplies, being the CJEU decision in *Card Protection Plan* C-349/96.

There will be no charge to the UK stores as they are the same entity as Tolich Ltd. The shipment to the Irish store will be a zero rated export. Proof of export documentation should be retained to support this – this can be either the official evidence, which is the goods departed message from CDS, or commercial evidence which includes sea or air waybills showing the physical movement of the goods from the UK.

The French IT hub will ship the goods to the French and Belgian subsidiaries. French VAT will be charged by Tolich Ltd for sales to the French subsidiary. The sales to the Belgian subsidiaries are likely to be a zero rated dispatch with the Belgium subsidiary accounting for acquisition tax. Local VAT advice should be taken to confirm this.

The subsidiaries in Europe are VAT registered and any VAT they incur via a direct charge, acquisition or import will be recovered in full as they make taxable supplies.

As the checkout systems are unlikely to be fixed permanently to land, the installation services provided by the local subcontractors in the subsidiaries will be regarded as general VAT rule services (this is to be confirmed with local specialist for the overseas subsidiaries). Tolich Ltd's UK establishment is controlling and overseeing the contract.n behalf of the group (including the hubs) and therefore UK reverse charge VAT will be due by Tolich Ltd and this should be fully recoverable.

The online training courses provided by the hardware manufacturer appeared to be optional, as an additional/separate charge is made for these. Tolich Ltd will be required to account for reverse charge VAT in the UK regardless of whether these are general VAT rule or electronic services. If there is a live trainer they would be general rule services so UK reverse charge VAT would be due on the full charge. If the content is pre-recorded or does not involve an actual trainer, they would be electronic services and UK VAT would be due on the element relating to use by the UK stores as electronic services are subject to the use and enjoyment rule and only part of the service is used in the UK. HMRC guidance suggests this can be supported with evidence such as intercompany recharges suggesting overseas usage. Alternatively, the view could also be taken that all of the services are used in the UK on the basis Tolich Ltd uses part of the services itself and recharges the other elements to the overseas entities. The reverse charge VAT will be fully recoverable.

The intercompany charge by Tolich Ltd to the overseas fellow subsidiaries for the software and training will not be subject to UK VAT on the basis of being general VAT rule or electronic services with an overseas place of supply so the reverse charge is due overseas in accordance with local rules. This VAT should be recoverable in full.

In terms of the time of supply, the supply of the hardware should be accounted for when the goods are shipped to the subsidiaries but if a VAT invoice is issued within 14 days of this, the invoice date becomes the tax point. For the software and training, the tax point would be when the software and training have been provided. This is on the basis Tolich Ltd does not intend to receive payment or issue a VAT invoice before these dates.

Answer 1 Marking Guide

Import of Goods to UK and French IT hubs	
- Customs Duty (origin, valuation, classification) and EORI	3
- Importer of record and VAT recovery	2
IT hubs in UK and France	
- Fixed establishments	0.5
- VAT registration	1.5
- VAT recovery	1
Movement of goods to fellow subsidiaries	
- VAT treatment of hardware and installation (single v mixed supply)	1
- Export, domestic movements intra EU movement	2
VAT treatment of online training provided by US Co (electronic versus general VAT rule services, use an)	
- General VAT rule	1
- Electronic services and use and enjoyment rules	1
Intercompany Transactions	
- Place of Supply	1
- Time of Supply	2
Place of Supply of Sub-Contractor Services	2
- Land related versus general VAT rule services	2
TOTAL	**20**

Answer 2

The Chinese manufacturer will ship the baby and toddler products directly to the UK, Italy and Germany. An import entry will need to be completed and Lunbur Ltd will need a GB and EU EORI. Import VAT will be payable on the import. As Lunbur Ltd is UK VAT registered due to the existing online activities, it will be entitled to use PIVA to account for import VAT on the UK VAT return and claim full credit for this on the same VAT return as it is fully taxable. With regard to the imports to Italy and Germany, import VAT will be due on the imports and local advice should be taken on the mechanism for paying this, which will likely be via a deferment account.

With regard to the customs duty implications of the imports, the correct tariff code needs to be used on the import entry and this will drive the rate of duty. The goods are not of preferential origin as they are manufactured in China. Consideration should be given to whether any anti-dumping duties may apply. The value of the imports will be the invoice value from the third-party manufacturer plus shipping and insurance costs if not already included in the invoice value.

As Lunbur Ltd will be operating a store in Italy it is likely to need a VAT registration. The same applies to the department store concession arrangements in Germany. In both locations it will be acting as importer of record as it owns the goods being imported. Although acting as importer of record does not necessarily mean that a local VAT registration obligation is triggered, from a supply chain perspective it means that the transactions taking place following the import by Lunbur Ltd have the local country as the place of supply for VAT purposes as this is where the goods are made available to the customer (the retail customers in Italy in the store and the department stores in Germany in relation to the concessions). The transactions are outside the scope of UK VAT as the place of supply is Italy or Germany.

With regard to the call-off stock, from a commercial perspective this means that the supplier (Lunbur Ltd) retains ownership of the goods until the customers (the department stores in Germany and UK) decide to 'call-off' the stock i.e. move the stock to the shop floor for sale. The goods can be stored in the customer's warehouse but are still owned by Lunbur Ltd at this point, hence the VAT registration obligation. A potential obligation for local VAT to be accounted for in accordance with local VAT rules arises. Lunbur Ltd needs to take advice on how the call-off stock provisions work in Germany and on whether the customer or Lunbur Ltd is required to account for the German VAT on the sale. For the UK department store concession, Lunbur Ltd will need to charge UK VAT on the sale at the time the goods are called off.

As Lunbur Ltd owns the goods at the point of import into the UK and Germany and until they are called off, Lunbur Ltd is entitled to reclaim the import VAT incurred on import. The department stores will not be able to recover the import VAT as they do not own the goods (although the German rules should be confirmed locally). Depending on whether Lunbur Ltd is required to VAT register in Germany, it will either reclaim the German import VAT on the VAT return or via a 13th Directive VAT refund claim. The UK import VAT will be recoverable on the UK VAT return.

In terms of the VAT treatment of the sales to retail customers in the department store, as the department store is acting as an undisclosed agent for VAT purposes, they are buying the goods from Lunbur Ltd in their own name and selling them to the retail customer in their own name. Lunbur Ltd should issue a valid VAT invoice to the department store showing the appropriate VAT treatment as above. In terms of the value of the transactions, the store would add a mark up to the purchase price of the goods from Lunbur Ltd to establish the retail selling price. So for example if they purchase for 80, they might sell for 100, accounting for a purchase and a sale with these values on their local VAT return.

With regard to the granting of IP rights to Lunbur GmbH, this will be a general VAT rule supply from Lunbur Ltd's UK VAT registration. No UK VAT is chargeable on the basis Lunbur GmbH is a business and will be required to account for reverse charge VAT in Germany. As the soft play equipment is being shipped to the UK for quality control purposes before being shipped to Germany, assuming a positive rate of customs duty applies, Lunbur Ltd should consider becoming authorised for Inward

Processing relief to prevent a double customs duty cost arising when the goods are initially imported to the UK and again in Germany. Import VAT would also be suspended under this relief.

The supply of back office support services by Lunbur s.r.o. will be a general VAT rule B2B supply taxed in the UK by Lunbur Ltd under the reverse charge. The reverse charge VAT will be fully recoverable by Lunbur Ltd as it is fully taxable. In terms of the time of supply, there is likely a continuous supply of services here, on the basis the services are provided on an ongoing basis without ever being completed. A tax point is therefore created for such services each year on 31 December if a VAT invoice has not otherwise been raised or payment made throughout the year in accordance with SI 1995/2518 regulation 82. Alternatively, a tax point may be created by an entry in the accounts once the accounts are agreed and signed off if this happens before 31 December.

Answer 2 Marking Guide

Import of Products to UK and Overseas	
- VAT implications, PIVA in UK	2.5
- Customs Duty Implications (origin, classification, valuation, EORI)	2.5
Overseas VAT registration obligations Lunbur Ltd Italy and Germany	2
VAT Treatment of Call off Stock	3
VAT Treatment of Concession Sales in Department Stores and time of supply	4
Place of Supply of IP rights to German subsidiary	2
Customs Duty Relief to prevent double duty cost on soft play equipment	1
Intercompany charge for Back Office Support	
- Place of Supply	0.5
- Time of Supply	2.5
TOTAL	**20**

Answer 3

As Osubu Ltd is profit making, it will not qualify 'eligible body' providing sporting activities in the UK under VATA 1994 Sch 9 Group 10 Item 3 and so its main activities will be subject to UK VAT.

The holiday clubs VAT exemption test is different. The relevant exemption is in the 'welfare services' provisions (VATA 1994 Schedule 9 Group 7 Item 9). Key is whether the holiday camps are the provision of sports training/activities or childcare. A not-for-profit test does not apply and VAT exemption applies if childcare is regarded as one of the predominant purposes of the holiday clubs which are for children. Given external qualified childcare assistants are used for these sessions this would suggest childcare is being provided. The FTT Decision (TC07453) in *RSR Sports Limited* established that the welfare exemption can be applied provided that childcare is the predominant element as opposed to sports training. Osubu Ltd should therefore consider factors such as how the courses are represented in publicity material, how parents view them and whether the club is OFSTED registered.

If Osubu Ltd has both taxable and exempt activities it will be partly exempt and will need to identify costs directly attributable to exempt (irrecoverable) or taxable (recoverable) activities and disallow some VAT, unless the de minimis limits apply. The standard partial exemption method is likely to be appropriate in this case.

When Osu Espagna SA employees come to the UK to run courses, Osubu Ltd will need to account for UK VAT from the full £30 charge. This is on the basis that there is typically no concept of 'revenue sharing' for VAT – one of the entities is seen as the entity making supplies to the customer for the full value of the charge and the other invoices the main contractor for their portion of the revenue. Osu Espagna SA will therefore invoice Osubu Ltd for its 50% share of the VAT exclusive amount of £25. per attendee. This charge will be a general VAT rule B2B service subject to the UK reverse charge by Osubu Ltd. This reverse charge VAT should be fully recoverable by Osubu Ltd as the VAT is directly attributable to the taxable courses.

Osu Espagna SA, is not required to UK VAT register. It does not have a fixed establishment here as it does not have premises it uses with any degree of permanence, its staff are employed in Spain, and it only make visits to the UK periodically. It is also a separate legal entity with its own revenue outside the corporate group. It makes general VAT rule supplies from Spain. It will be eligible to file an overseas VAT refund claim in the UK to claim the VAT incurred on travel costs, including those from the period when it was shadowing UK instructors, subject to the time limits for such claims. As Osu Espagna SA is fully taxable, the VAT should be fully recoverable subject to the general conditions associated with the claim being met i.e. providing a certificate of taxable status and holding valid VAT invoices from suppliers.

The imported goods will not qualify for preferential origin duty rates as they are manufactured in Japan. They will need to be classified using the appropriate tariff code. From a valuation perspective, this will be the invoice value from the third-party manufacturer per customs valuation method 1 – as this is a third party transaction the invoice value should be accepted as not being influenced by the relationship. The value of the royalty charge from the Japanese parent would need to be included in the customs value too as Osubu Ltd will not be able to use the branded kit without the payment of the royalty fee.

The royalty fee is for a supply of intellectual property rights from Japan to the UK and this is a B2B general VAT rule service subject to the reverse charge in the UK. However it has already been taxed in the UK by its inclusion in the customs value at import so there would be no requirement to account for VAT on it twice.

Assuming the holiday camps are taxable, import VAT incurred in the UK would be fully recoverable. If the camps do qualify for exemption the kit would be treated as an overhead and subject to partial exemption. The standard method calculation would be based on revenue values, with the amount irrecoverable being based on total revenue from the holiday camps as a percentage of total revenue.

Answer 3 Marking Guide

VAT Treatment of Karate Classes	
- Whether sporting VAT exemption applies	2
VAT Treatment of Holiday Clubs	
- VAT exemption conditions and relevant case law	2
Osubu Ltd Partial Exemption Position	1
VAT Treatment of Revenue Share for Specialist Courses – Agent v Principal	2
Ability of Osu Espagna SA to file an overseas VAT refund claim	2
Importation of kit to UK	
- Import process customs	2
- Import process VAT	1
- Customs valuation including additions (royalty fee)	2
Place of Supply Royalty Fee	1
TOTAL	**15**

Answer 4

Acquisition

The transfer of trade and assets from the German company to Rostapa UK Ltd can be treated as a VAT free transfer of a going concern provided the conditions set out in Art 2 SI1995/1268 are met.

With cross border transfers of business trade and assets, the question arises as to whether the transfer is outside the scope of the reverse charge/an import VAT charge or whether it does not qualify, meaning the normal VAT rules apply to the purchase. The transfer in this case meets the conditions set out above, so no reverse charge VAT will be due. In the event tangible assets are transferred, for example office equipment, laptops etc, an import VAT and duty relief for capital items can be used to relieve the import taxes. The relief is claimed at import and prior authorisation is not required. If the transfer does not qualify as a VAT free TOGC, for example if there were to be a break in trade, reverse charge VAT would be due on the value of the intangible assets being transferred excluding any staff related salary costs. The anti-avoidance legislation relating to TOGCs into a VAT group does not apply here as the VAT group is not partly exempt.

VAT Grouping

Rostapa plc needs to determine which of the acquired entities are eligible and which it wishes to include in the UK VAT group. Rostapa UK Ltd will also need to be VAT registered. In order to include the newly acquired companies and Rostapa UK Ltd in the UK VAT group the following conditions would need to be met as set out in VATA 1994 Section 43A:

- Rostapa plc or another entity must own the majority (ie more than 50%) of the shares in all of the VAT group members;
- VAT group members should be established in the UK (business or fixed establishments)

Members of the VAT group are jointly and severally liable for VAT debts and supplies between members are generally disregarded subject to any anti avoidance legislation. The VAT group is treated as a single taxable person (VATA 1994 Section 43).

As the acquired group has German subsidiaries which are separate legal entities to Rostapa plc, they are not entitled to be VAT grouped in the UK on the assumption they do not have establishments or branches of their own in the UK. In addition they are not an overseas branch of a UK company which would have meant they would be deemed established in the UK and would have been eligible for grouping under the UK's 'whole entity' approach to VAT grouping as established in the VAT Tribunal decision *Shamrock Leasing Ltd* [Lon98/184].

Input Tax Recovery

As Rostapa plc will be making taxable supplies of management services to the UK and German subsidiaries and is a member of a fully taxable VAT group, the VAT incurred on the acquisition costs will be fully recoverable. This position was confirmed in the CJEU decision in the *Laurentia & Minerva* case (C108-14). This recovery is subject to the normal rules on input VAT recovery ie the availability of valid VAT invoices correctly addressed to Rostapa plc and supporting engagement letters /commercial contracts.

With regard to the costs being paid by Rostapa plc in relation to due diligence activities carried out by German advisors, as the supply of these services is to Funds GmbH, Rostapa plc is not entitled to recover the VAT incurred. Only Funds GmbH would be able to, as the VAT invoice should be issued to Funds GmbH (as should the engagement letter). The duty of care by the advisor is owed to Funds GmbH, not Rostapa plc. These principles were established in the *Airtours Ltd* case [2016] UKSC 21. Rostapa plc is only making a 3rd party consideration payment rather than receiving the supply.

The funding provided by Funds GmbH will give rise to interest charges to Rostapa plc. Reverse charge VAT will not be due in the UK on these on the basis the interest charge is VAT exempt in accordance with VATA 1994 Sch 9 Group 5 Item 2.

Intercompany Charges

The intercompany charges made by Rostapa plc to the other UK VAT group members will be outside the scope of UK VAT due to the VAT group being in place. Supplies of back office support services to the German subsidiaries will be subject to the general VAT rule and UK VAT will not apply. Instead reverse charge VAT will be due in Germany.

Answer 4 Marking Guide

VAT Treatment Cross Border TOGC	3
VAT Grouping	
- Conditions	1
- Consequences	1
- overseas subsidiary	2
VAT Recovery on Professional Fees incurred by Rostapa Ltd	3
VAT Recovery on German Funder's fees – 3rd Party Consideration	2
VAT liability of funding provided by Funds GmbH	1
Intercompany Charge to UK and Overseas Subsidiary	2
TOTAL	**15**

Answer 5

Customs Duty

A Customs Duty relief called Returned Goods Relief (RGR) can be claimed where the goods:

1) were in Free Circulation in the UK before they were exported,
2) have not been processed or upgraded whilst outside the UK (maintenance and work to preserve their condition are acceptable), and
3) are re-imported within three years of their export. HMRC may, in exceptional circumstances allow an extension to the three-year rule.

[2 marks]

To claim relief from Customs Duty Pethars must be able to demonstrate that the imported goods are the same as those that were exported from the UK but the importer does not need to be the same person that exported the goods.

[1 mark]

Pethars will clearly not hold this evidence for the goods sold by Hysalcont, however, Morbrash Co may well be able to provide commercial paperwork and US import documents relating to its purchase of the goods that would serve as evidence for RGR for Customs Duty.

[1 mark]

Pethars should consider what evidence Morbrash Co holds, and is prepared to share, before it agrees to buy or settles on a price for these goods as whether evidence is available will determine whether there is an irrecoverable cost incurred in the form of Customs Duty at importation.

Pethars will need to decide whether it thinks the evidence is sufficient or whether it is more prudent to have certainty by not claiming the relief.

It must also consider that were it to make an incorrect claim to RGR HMRC could charge Civil Penalties as well as charging it the Customs Duty and Import VAT that have been relieved.

[2 marks]

Pethars should hold the evidence for the goods it exported as these were only exported two years ago.

[0.5 mark]

Import VAT

The conditions for relief from Import VAT under RGR are stricter than for Customs Duty. For Import VAT, the exporter and importer must be the same person, and the original export entry is required to demonstrate this. HMRC can however accept alternative evidence such as commercial shipping documentation and invoices.

[1.5 mark]

In practice it no longer matters whether Import VAT relief can be claimed under RGR provided the importer is eligible to reclaim the Import VAT, (which will be the case in the vast majority of situations). If it can, then PVA (Postponed VAT Accounting) may be elected on the entry. This means that Import VAT is not paid at import but is accounted for as an input tax and output tax on the next VAT return. Consequently, the effect is the same.

[1 mark]

Where PVA is not elected, it is usually just a cash-flow problem. The Import VAT can be paid on the entry and reclaimed on the next VAT return (subject to normal rules) when the C79 (Import VAT Certificate) is issued.

[1 mark]

Answer 5 Marking Guide

<u>Customs Duty</u>	
Relief is RGR. Main conditions: goods were in Free Circulation when exported; have not been processed (except maintenance) whilst outside UK; and re-imported within three years of export. HMRC may extend time limit.	2
Pethars must be able to demonstrate that they are the same goods. Importer can be different from exporter.	1
Pethars will not have evidence for goods sold by Hysalcont but Morbrash may have evidence.	1
Pethars should consider what Morbrash has and will share before committing. Price it pays need to factor in Customs Duty if relief is not available. Pethars need to decide whether evidence is good enough or whether certainty of not claiming is better. Potential penalties for incorrect claim.	2
Pethars should have evidence for goods it sold.	0.5
<u>Import VAT</u>	
VAT rules are stricter. Exporter and importer must be same person and need original Export Declaration. HMRC may accept alternative evidence.	1.5
Usually doesn't matter, if can claim Import VAT can use PVA, elect on entry. Account for VAT on next return.	1
However, if can't use RGR and don't use PVA it is usually just a cash flow problem, pay on entry and reclaim through VAT return.	1
Total	**10**

Answer 6

Northern Ireland (NI) is part of the UK and the UK Customs Territory but following Brexit it is subject to special status for Customs and VAT rules.

[0.5 mark]

The EU Customs legislation applies in NI but in most cases, (see below for relevant exceptions), UK Customs Duty rates are used for imports into NI.

[0.5 mark]

The UK and EU each have their own Tariff which set out the relevant rates but the EU's rate must be used for movements into NI where the goods are "at risk".

[1 mark]

Whether goods are "at risk" is determined by a set of objective tests, it is not an opinion.

[0.5 mark]

Consequently, there are special rules for goods that move from Great Britain to NI (even if those goods were manufactured in Great Britain) and for goods imported into NI from outside the EU and the UK.

[0.5 mark]

The Customs Duty rates set by the EU must be used where goods are "at risk" of moving from NI to the EU. However, the EU Customs Duty Rates may be reduced or relieved where the goods meet origin rules and preference is available.

[0.5 mark]

The declarant must enter a code (NIREM) on import declarations for NI stating that goods are "not at risk" of entering the EU otherwise they are deemed to be "at risk".

[0.5 mark]

Anyone may make a "not at risk" statement based on the "applicable duties" test, see below, but the importer must be authorised under the UK Trader Scheme (UKTS) to make this declaration using any of the other rules.

[1 mark]

Under the TCA (Trade and Co-operation Agreement) between the EU and UK the reduction to zero for Customs Duty Rates is based on goods originating (i.e. being made or sufficiently transformed) in the EU / UK, not on goods being in Free Circulation.

[0.5 mark]

There is no requirement to complete an Export Declaration for movements from GB to NI, however, an Import Declaration is required in NI. A different EORI, (XI EORI), is needed to make Import Declarations in NI (even if a GB EORI is held).

[1 mark]

Whilst Poirhast could use a normal Customs Agent to make the Import Declarations on its behalf, there is a free to use Government-backed declaration service (Trader Support Service (TSS)) that was set up to ease the administrative burden both for GB to NI movements and imports to NI from outside the UK and EU, so it makes sense to use this.

[1 mark]

GB to NI movements

Product 1 – electronic keypads to be processed and sold

Regardless of where they originate, where goods are to be processed and then sold on by the importer in NI they are considered “at risk”, unless any of the exceptions apply, therefore at the time of the GB – NI movement the EU Customs Duty rate must be used.

[1 mark]

If however Poirhast has a turnover of less than £500,000 it may declare goods it processes and sells on as “not at risk” regardless of the type of goods and what they will be used for.

[0.5 mark]

As stated above, Poirhast must be authorised under the UKTS to declare processed goods as “not at risk” so until it is authorised (if it is eligible) the goods would have to be declared as “at risk”.

[0.5 mark]

Poirhast may make a repayment claim for goods declared as “at risk” if it becomes authorised for UKIM.

[0.5 mark]

Product 2 – security lights with an EU Tariff Customs Duty Rate of 0%

As the EU Customs Duty is equal to the UK Customs Duty and the goods will not be processed these are “not at risk”, no authorisation is required and these can be declared as such immediately.

[1 mark]

Product 3 - electronic door locks

Although in Free Circulation in GB, as the goods originate in US the origin test in the TCA is not met. As the EU Customs Duty rate is higher than the UK Customs Duty rate the goods are “at risk” and the EU Customs Duty amount must be paid on the GB – NI movement.

[1 mark]

However, if Poirhast becomes authorised under UKTS it can declare them as “not at risk” provided it will be able to prove that the goods were for sale to or for final use by consumers based in NI.

[0.5 mark]

Whether this is possible or practical depends on whether Poirhast will be able to obtain evidence from its customers that their sales meet these conditions. What evidence would be required would need to be considered on a case-by-case basis. For example, if Poirhast’s customer sells to a retail outlet which has no presence outside of NI, then a simple statement to that effect will be enough. However, if the retailer has outlets across Europe then commercial contracts limiting the sale and delivery of goods to end consumers in the UK may be needed.

[2 marks]

Poirhast will be the party exposed to the risk of additional duty if it cannot provide the evidence or if HMRC discover that Poirhast’s customers are selling to ineligible customers. Poirhast may consider it more prudent to simply declare the goods as “at risk” and pass on the cost to its customers.

[1.5 marks]

Import from somewhere other than EU or GB

Product 4 – padlocks - Direct import from Canada to NI

Any goods which are imported into NI from outside of the EU and the UK where the EU Customs Duty rate is 3% or more higher than the UK rate, as in this case, are automatically considered “at risk”.

[1 mark]

Import VAT GB - NI

There are special rules for a GB to NI sale. The seller invoices as for a domestic sale but accounts for the Import VAT as output tax. The purchaser / importer recovers the VAT subject to the normal rules.

[1 mark]

Import VAT Non-EU / Non-GB - NI

Import VAT may be declared and paid on the Customs Declaration and reclaimed later subject to the normal rules. However, better cashflow is achieve by using Postponed VAT Accounting, as no authorisation is needed. A code is entered on the Customs Declaration and no Import VAT is declared on the entry. Instead, it is accounted for as an in and an out on the next VAT return.

[2 marks]

Answer 6 Marking Guide

NI is part of UK but has special status for Customs and VAT rules.	0.5
EU legislation (UCC) apply in NI but usually UK Customs Duty rates are used.	0.5
Both EU and UK have own tariff, must use EU’s when goods are “at risk”.	1
Whether goods are “at risk” is determined by objective set of tests.	0.5
There are special rules for goods that move GB – NI or from anywhere other than EU and UK to NI.	0.5
Can reduce EU Customs Duty rate where goods meet origin rules and preference is available.	0.5
Must make a positive declaration that goods are “not at risk” or they are deemed “at risk”. (Exact code not needed.)	0.5
Anyone may make “not at risk” statement based on duty rate differences. But need UKTS authorisation to make it for any other reason. [UKIM will be accepted as applies from 30/09/2023.]	1
TCA reduces EU goods Duty Rates based on origin not Free Circulation status.	0.5
GB – NI movement does not require an export declaration. Do require Import Declaration. An XI EORI is needed.	1
Poirhast could use a normal agent but cheaper to use TSS as this is free Gov’t service.	1
GB to NI Movements	
Product 1 - keypads to be processed and sold	

Goods to be processed and then sold are “at risk” unless a specified exception exists.	1
Only one that may apply is £500,000 [UKIM = £2m will be accepted] turnover. If Poirhast’s turnover is below this limit it may declare them as “not at risk”.	0.5
Must be UKTS authorised to do this, so until then goods must be declared as “at risk”.	0.5
May make repayment claim for “at risk” entries once authorised.	0.5
<u>Product 2 – security lights with a EU Tariff Customs Duty Rate of 0%</u>	
EU Duty is same as UK duty rate and there is no processing. So goods may declared as “not at risk” immediately.	1
<u>Product 3 - electronic door locks</u>	
Although in FC, goods originate in US. EU Customs Duty Rate is higher than the UK rate, so goods must be declared as “at risk”.	1
However, if Poirhast is authorised under UKTS it can declared them as “not at risk” if it can demonstrate the goods are for sale to or final use by consumers in NI.	0.5
Practicality depends on evidence from Poirhast’s customers. Evidence may vary. Retail outlet that only operates in NI – simple statement would be enough. Multi-national retailer requires contractual arrangement. (Any examples will gain credit)	2
Poirhast is the one exposed to the risk of additional duty if can’t provide evidence or customer does something ineligible. May be more prudent to declare as “at risk” and pass on cost.	1.5
<u>Import from somewhere other than EU or GB</u>	
<u>Product 4 – padlocks - Direct import Canada to Northern Ireland</u>	
Any goods imported from outside EU to NI where the Customs Duty rate is 3% or more higher than UK rate is automatically “at risk”.	1
<u>Import VAT GB - NI</u>	

Special rules. Seller invoices as for a domestic sale but accounts for the Import VAT as Output Tax. Purchaser / Importer recovers the VAT subject to normal rules.	1
Import VAT Non-EU / Non-GB - NI	
Can declare and pay on declaration, reclaim subject to normal rules. Cash flow is improved by using PVA. No authorisation, enter code on entry. Account for it as an in and an out on next VAT return.	2
Total	**20**